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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

F₁

FILE:

[REDACTED]

Office: GUATEMALA CITY, GUATEMALA

Date **OCT 21 2010**

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The field office director denied the Form I-600, Petition to Classify Orphan as an Immediate Relative. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision to deny the petition on four separate occasions in response to subsequent motions to reopen or reconsider. The matter is again before the AAO on a fifth motion to reopen or reconsider. The motion will be dismissed. The previous decisions of the field office director and the AAO will be affirmed. The petition will remain denied.

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i). The petitioner filed the Form I-600 on June 2, 2008, and the field office director denied the petition on July 22, 2008. On February 5, 2009, the AAO dismissed the petitioner's subsequent appeal. We affirmed that decision, in response to subsequent motions to reopen or reconsider, on May 11, 2009, October 19, 2009, March 4, 2010, and July 14, 2010. As the facts and procedural history of this case were adequately documented in its February 5, 2009 decision, we will only repeat certain facts as necessary.

In our February 5, 2009 decision, we dismissed the petitioner's appeal on the basis of our determination that (1) because the identity of the beneficiary had not been established, the record lacked conclusive evidence to establish that the beneficiary meets the definition of an orphan; and (2) the record lacked sufficient evidence regarding the parentage of the beneficiary to establish that the biological mother was a "sole parent" or that the beneficiary was an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents.

In our May 11, 2009 decision, we found that the petitioner had again failed to resolve these issues. In our conclusion, we found that the record still contained multiple, and unresolved, contradictions and inconsistencies. We noted that the petitioner had not submitted a valid birth certificate or any other credible documentation to resolve the contradictory evidence in the record regarding the circumstances of the beneficiary's birth. Moreover, the contradictory statements by the beneficiary's birth mother regarding whether she consents to the emigration and adoption of her child had not been explained. We noted further that the record lacked evidence that the beneficiary's biological father had severed his parental ties or irrevocably released the beneficiary for emigration and adoption. In the alternative, the record also lacked any documentary evidence that the beneficiary's mother, if she were to be considered a "sole parent," was incapable of providing for the beneficiary's basic needs in a manner consistent with local standards in Guatemala. We found that in light of such unresolved inconsistencies and lack of evidence, there were questions as to whether either or both parents had abandoned the beneficiary or irrevocably released him for emigration and adoption. Accordingly, we found that the petitioner had failed to establish that the beneficiary qualifies for classification as an orphan, as that term is set forth at section 101(b)(1)(F)(i) of the Act, and we affirmed our February 5, 2009 decision dismissing the appeal.

In our October 19, 2009 decision, we rejected previous counsel's request to delay adjudication of the motion pending the outcome of a hearing that was to take place in October 2009, and affirmed our February 5, 2009 decision. In our decisions of March 4 and July 14, 2010, we again rejected

previous counsel's request to delay adjudication of the motion, and affirmed our February 5, 2009 decision.

In the present motion to reopen or reconsider, the petitioner¹ submits a four-page appellate brief dated August 10, 2010. The brief is virtually identical to the April 5, 2010 brief submitted by previous counsel in support of the petitioner's fourth motion to reopen or reconsider, which we considered fully before issuing our July 14, 2010 decision. Upon review, we find that the petitioner's submission qualifies as neither a motion to reopen nor a motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, the following:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The petitioner's submission states no new facts and contains no additional evidence. Nor does the petitioner submit any new argument on motion: the petitioner's only statement on the Form I-290B refers the AAO to "prior and present briefing," and, as noted, the brief he submits is virtually identical to the one we considered before issuing our previous decision. Because the petitioner states no new facts and submits no evidence or testimony to support such facts, his motion to reopen must be dismissed.

Nor does the petitioner's submission qualify as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part the following:

¹ The petitioner stated in his August 10, 2010 appellate brief that his appearance in these proceedings was *pro se*. However, he also submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by an individual who stated that she is an accredited representative of a nonprofit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Department of Justice, Board of Immigration Appeals pursuant to 8 C.F.R. § 1292.2. However, that individual did not provide the name of the organization of which she is an accredited representative or the expiration date of her accreditation as instructed at part 2 of the Form G-28. This individual, therefore, has not established that she is a licensed attorney or an accredited representative as defined at 8 C.F.R. §§ 103.2(a)(3) and 292.1(a)(4). The petitioner also submitted a Form G-281, Notice of Entry of Appearance of Attorney in Matters Outside the Geographic Confines of the United States signed by the same individual who signed the Form G-28. On the Form G-281 that individual did not provide, as instructed at part 2 of the Form G-281: (1) the country in which she is licensed to practice law, the country in whose court of general jurisdiction in which she is a member in good standing, and a statement regarding whether she is subject to any order of any court or administrative agency disbarring, suspending, enjoining, restraining, or otherwise restricting her in the practice of law; and/or (2) whether she is associated with an attorney of record who has previously filed a Form G-281. As the petitioner stated that he was filing the instant motion *pro se*, and the individual who signed the Forms G-28 and G-281 has not established that she is authorized to represent the petitioner pursuant to the regulation at 8 C.F.R. § 292.4(a), we consider the petitioner self-represented.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner cites no pertinent precedent decisions to establish that our previous decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Furthermore, because the petitioner's brief is virtually identical to the one submitted by previous counsel in support of the previous motion to reopen and reconsider, each argument advanced by the petitioner in his brief was addressed fully in our prior decision. Consequently, the petitioner's motion to reconsider will be dismissed.

The petitioner's submission qualifies as neither a motion to reopen nor a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." As such, the petitioner's motion will be dismissed, the proceedings will not be reopened or reconsidered, and the prior decisions of the director and the AAO will not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed. The petition remains denied.